



Excess Liability Trust Fund (ELTF) Program

2000

**Annual Report of Fund Administration
Prepared for the Financial Assurance Board**

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**Indiana Department of Environmental Management
Excess Liability Trust Fund Program
Office of Land Quality**

**Annual Report of Fund Administration
(January 1993 - May 2000)
As of December 20, 2000**

INTRODUCTION

The Indiana Department of Environmental Management (IDEM), submits to the Financial Assurance Board, its Annual Report of Fund Administration for the Excess Liability Trust Fund (ELTF) Program.

This report is prepared in accordance with 328 IAC 1-2-2, which requires: (i) A financial statement detailing information for the management and oversight of the fund, including facts concerning the amount of money currently in the fund, the amount of money obligated for corrective actions and third party liability claims, and estimates of future revenue for and demands on the fund; (ii) an overview of the fund claims process; and (iii) a report of the number of claims made against the fund that were approved and denied during the reporting year.

PROGRAM OVERVIEW

Program Management

ELTF claims and technical reviews were processed by IDEM personnel from January 1, 1993 until September 1998. The anticipation of an increase in claims and technical documents to be submitted as a result of the EPA requirement for owners and operators to upgrade their Underground Storage Tanks (USTs) or close them by December 22, 1998, prompted IDEM to hire a private consultant that had the knowledge and resources to handle such a large claims load. Peterson Consulting (now Navigant) was hired in September 1998 to take over these duties. Navigant's ability to increase the amount of resources allocated to handle the increase in claims (507 - '98, 917 - '99, and 846 - thru April '00) has enabled the claims process to remain on the proper time line.

Claims Processing

The ELTF Section oversees, reviews, and processes all claims seeking reimbursement from the ELTF. Further, the ELTF Section makes recommendations regarding payment to claimants based on a thorough review of several eligibility requirements and cost guidance. Eligibility requirements include, but are not limited to, the following:

1. USTs must be registered within 30 days of installation or taking ownership
2. Pay a minimum of 50% of the required tank fees. Fees have been collected since 1988. ('88 & '89/\$90/tank, '90 - '99/\$290/tank, and '00 - current/\$90/tank)
3. Report any suspected release within 24 hours of discovery
4. The costs are for an approved emergency action
5. Have an approved Initial Site Characterization (ISC)
6. Have an approved Corrective Action Plan (CAP)
7. Be in compliance with all applicable federal and state laws and regulation governing USTs by the date the requirements became effective
8. Meet the appropriate deductible for the site:

\$35,000	- if the tank is not in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission (no upgrades have been done)
\$30,000	- if the tank is in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission; and is not a double wall tank
\$25,000	- if the tank is in compliance with EPA, Solid Waste Management, and Fire Prevention & Building Safety Commission; and is a double wall tank

Following a review of a claimant's eligibility, the ELTF Section ensures that all costs associated with the claim are reasonable. The Solid Waste Management Board promulgated rules under 328 IAC 1-3-5 which establish a cost range for cleanup activities. Costs are determined by the ELTF Section as reasonable by reviewing the following:

1. The dollar amount or range claimed
2. The activity outlined in the emergency action, ISC, or CAP
3. The scope and timing of the response activities

The charts in Appendix A outline the general flow of the ELTF reimbursement process.

Program Objectives

1. Providing a mechanism for the reimbursement of monies spent by underground storage tank owners and operators on the cleanup of petroleum released from underground storage tanks
2. Providing a means of providing financial assurance for owners and operators of underground petroleum storage tanks and providing a source of money for the indemnification of third parties
3. Process all claims for reimbursement within 60 days of receipt of the application

Legal / Appeal Process

An applicant has a right to file a Petition for Review whenever a claim or any part thereof is denied by the agency. The Applicant must file a Petition for Review to begin the appeals process. The Petition should be sent to the Office of Environmental Adjudication (OEA) and must contain certain information. The Office of Legal Counsel in IDEM represents the Excess Liability Trust Fund in these cases. If an applicant fails to file a Petition for Review in a timely fashion, the applicant loses the right to ask for a review of the ELTF's decision and the decision is final.

Once the Petition has been filed, the OEA typically orders the parties to attend a pre-hearing conference. At the pre-hearing conference, the parties may discuss the issues and determine whether the matter may be settled or whether the OEA needs to establish a schedule for a hearing. This schedule will include dates by which certain types of pleadings must be filed, discovery must be conducted and a date on which a hearing will be held.

Typically, applicants have 3 types of objections to a denial of ELTF funds. The first objection involves issues regarding the disapproval of a Corrective Action Plan. The second objection is to ELTF's determination that the applicant is not 100% eligible for reimbursement because of a failure to pay all annual tank fees. The third objection is to the disallowance of costs because the costs exceed the reasonable cost rules or because the costs are not eligible for reimbursement. (Typically, the applicant does not have to appeal a determination that the cost is not supported by sufficient back up documentation. The ELTF will reconsider these costs if additional documentation is produced.) Most of the cases that are appealed raise more than one issue.

The majority of Excess Liability Trust Fund cases, which involve disputes regarding CAPs, are settled. The parties are usually able to reach an agreement as to the technical merits of the CAP.

Cases which involve disputes about tank fees, may be settled if the applicant can produce additional evidence that the tank fees were paid. If the applicant cannot produce such evidence, the parties will have to present the OEA with evidence to support its position. The OEA will make a determination, based upon the evidence presented, as to which party is right.

Cases that involve the disallowance for costs may be settled if the applicant can produce additional evidence that the ELTF made an error in the calculation of eligible costs. However, most of these cases will be decided by the OEA.

The number of appeals has remained about the same over the years. There are approximately 35 to 40 cases pending before the OEA at any given time.

THIRD PARTY CLAIMS

Third Party Liability. The damage a tank owner or operator is legally obligated to pay for the injury suffered by a third party as the result of a release. Third party liability includes bodily injury and property damage.

Eligibility. Only owners/operators that are eligible for reimbursement may be eligible for monies for the indemnification of third parties.

Payment. The Attorney General's office determines whether a third party claim is reasonable. The ELTF program then processes the claim for payment.

History. There have been four claims submitted for the reimbursement of a third party. All have been approved for payment.

Excess Liability Trust Fund
State of the Fund
Facility and Claims Totals
(January 1993 - May 2000)

Fund Activity

Total dollars requested	\$138,670,756.43
Total dollars paid	\$59,023,715.71
Total dollars approved in the deductible	\$15,152,805.60
Total dollars paid + approved (deductible)	\$74,176,521.31
Percentage of total dollars paid vs. requested, not including the deductible	43%*
Percentage of total dollars approved vs. requested, including the deductible	54%*

** Percentages are reflective of both eligible and ineligible facilities*

Facility Activity

Active UST facilities	4898
Active LUST Sites (may not be an active facility)	3912
LUST Sites that require No Further Action	2062
Claims submitted	3610
Facilities submitting claims	799
Average Number of claims per facility	4.52
Facilities receiving reimbursement	423
Facilities eligible for reimbursement (pre-approvals, pending Initial Site Characterization and/or Corrective Action Plan approval, and those sites not yet reaching their deductible)	296
Facilities not eligible for reimbursement from the fund	80

Eligible Facilities

Number of facilities on which payment has been made	423
Average dollars approved per facility, including the deductible	\$175,276.89
Average percentage approved per facility, including the deductible	81%
Average dollars paid per facility, not including the deductible	\$139,535.97
Average percentage paid per facility, not including the deductible	53%

Eligible & Ineligible Facilities

Approved Facilities	719
Ineligible Facilities	80
Average dollars paid per facility, not including the deductible	\$73,871.99
Average dollars approved per facility, including the deductible	\$92,793.65
Average dollars requested per facility	\$173,553.39

Fund Projections

In an attempt to determine future expenditures from the Fund, both the current eligible claim population and the potential claim population were taken into consideration.

Currently Eligible and Potentially Eligible Facilities:

Dollars that could potentially be applied for by facilities currently receiving reimbursement:

Facilities receiving reimbursement (multiplied by)	423
Maximum dollar amount that can be paid per incident	\$1 million
Total potential dollars (minus)	\$423,000,000.00
Total dollars already approved for the 423 sites	\$74,176,521.31
(423 x \$1,000,000.00) - \$74,142,122.33) =	\$348,823,478.69

Dollars that could potentially be applied for by facilities currently in ELTF:

Facilities receiving reimbursement	423
Facilities potentially eligible for reimbursement (pre-approvals, pending Initial Site Characterization and/or Corrective Action Plan approval, and those sites not yet reaching their deductible	296
Total facilities	719
Maximum dollar amount that can be paid per incident	\$1 million
Total potential dollars	\$ 719 million
Total dollars already approved for the 719 sites	(\$74,176,521.31)
(719 x \$1,000,000) - \$74,142,122.33) =	\$644,823,478.69

UST/LUST Facility Universe:

Active UST facilities	4898
Active LUST Sites (may not be an active facility)	3912
LUST Sites that require No Further Action	2062

Potential LUST Sites that have yet to apply for ELTF:

Dollars that could potentially be paid to facilities with releases that have yet to apply for ELTF Funding

Sites with releases that are currently undergoing clean up:	3912
Number of sites (799 of 3912) already applying for ELTF:	799
Total Sites that could potentially apply (multiplied by)	3113
Percentage (10%, 25%, 50%) of 3113 sites that might apply (multiplied by)	
Maximum dollar amount that can be paid per incident (or)	\$ 1 million
Avg. dollars paid per facility	\$139,535.97

Potential dollars that could be paid to facilities yet to apply to ELTF:

Using: *10%, 311 sites (multiplied by)*

**Maximum dollar amount that can be paid per incident
\$1,000,000.00 (or)** **\$ 311 million**

Avg. dollars paid per facility \$139,535.97 **\$43,395,686.67**

25%, 778 sites

**Maximum dollar amount that can be paid per incident
\$1,000,000.00 (or)** **\$ 778 million**

Avg. dollars paid per facility \$139,535.97 **\$108,558,984.66**

50%, 1557 sites

**Maximum dollar amount that can be paid per incident
\$1,000,000.00 (or)** **\$1,557 million**

Avg. dollars paid per facility \$139,535.97 **\$217,257,505.29**

Excess Liability Trust Fund: Revenue and Expense Report
Prepared for the ELTF Financial Assurance Board
(7/1/96 thru 9/30/00)

Fiscal Year	1997 (7/96-6/97)	1998 (7/97-6/98)	1999 (7/98-6/99)	2000 (7/99-6/00)	2001 (7/00-9/30/00)
Beginning Balance	\$35,378,715.00	\$32,919,346.00	\$51,083,188.00	\$68,680,896.00	\$78,851,383.00
Claims Paid	(\$11,320,965.00)	(\$10,454,424.00)	(\$9,596,444.00)	(\$16,732,324.00)	(\$5,677,172.00)
Revenue:					
Interest to date	\$1,637,957.00	\$1,097,319.00	\$2,470,107.00	\$3,460,667.00	\$1,171,319.00
Oil Inspection/UST Tank Fee	\$7,768,131.00	\$28,009,275.00	\$25,593,792.00	\$26,987,875.00	\$7,764,700.00
Penalties	\$1,477.00	\$0.00	\$14,220.00	\$91,636.00	\$19,026.00
Total Revenue	\$9,535,565.00	\$29,106,594.00	\$28,078,119.00	\$30,540,178.00	\$8,955,045.00
Expenses:					
Personal Services	\$315,538.00	\$318,437.00	\$274,896.00	\$92,458.00	\$34,067.00
Office Exp. (postage, phone, et	\$10,144.00	\$7,610.00	\$9,109.00	\$15,702.00	\$1,784.00
Contractual Services:					
Rent	\$30,491.00	\$30,501.00	\$30,935.00	\$0.00	\$0.00
Peterson Worldwide N/A		N/A	\$558,723.00	\$1,608,816.00	\$496,362.00
Revenue Indirect Co N/A		N/A	N/A	\$23,309.00	\$0.00
Supplies	\$1,521.00	\$3,268.00	\$3,155.00	\$589.00	\$0.00
Equipment	\$220.00	\$231.00	\$0.00	\$0.00	\$0.00
Physical Exams	\$1,250.00	\$2,556.00	\$3,247.00	\$1,425.00	\$0.00
Legal Costs Fund Transfer	\$122,374.00	\$122,163.00	\$0.00	\$0.00	\$0.00
Indiana Development Finance . N/A		N/A	N/A	\$120,000.00	\$0.00
Administrative Funds Transfer N/A		N/A	N/A	\$1,772,879.00	\$443,220.00
In-State Travel	\$2,152.00	\$2,263.00	\$2,477.00	\$788.00	\$200.00
Out-of-State Travel	\$2,073.00	\$1,299.00	\$1,425.00	\$1,401.00	\$324.00
Operating Expenses	(\$491,671.00)	(\$488,328.00)	(\$883,967.00)	(\$3,637,367.00)	(\$975,957.00)
Year End Fund Balance	\$32,919,644.00	\$51,083,188.00	\$68,680,896.00	\$78,851,383.00	\$81,153,299.00

sab - 11/1/00

Indiana Department of Environmental Management
Excess Liability Trust Fund Program
Report to the Financial Assurance Board
As of July 25, 2000
Prepared by Navigant Consulting, Inc.

Claim Summary: Submittal Periods January 1993 through May 2000

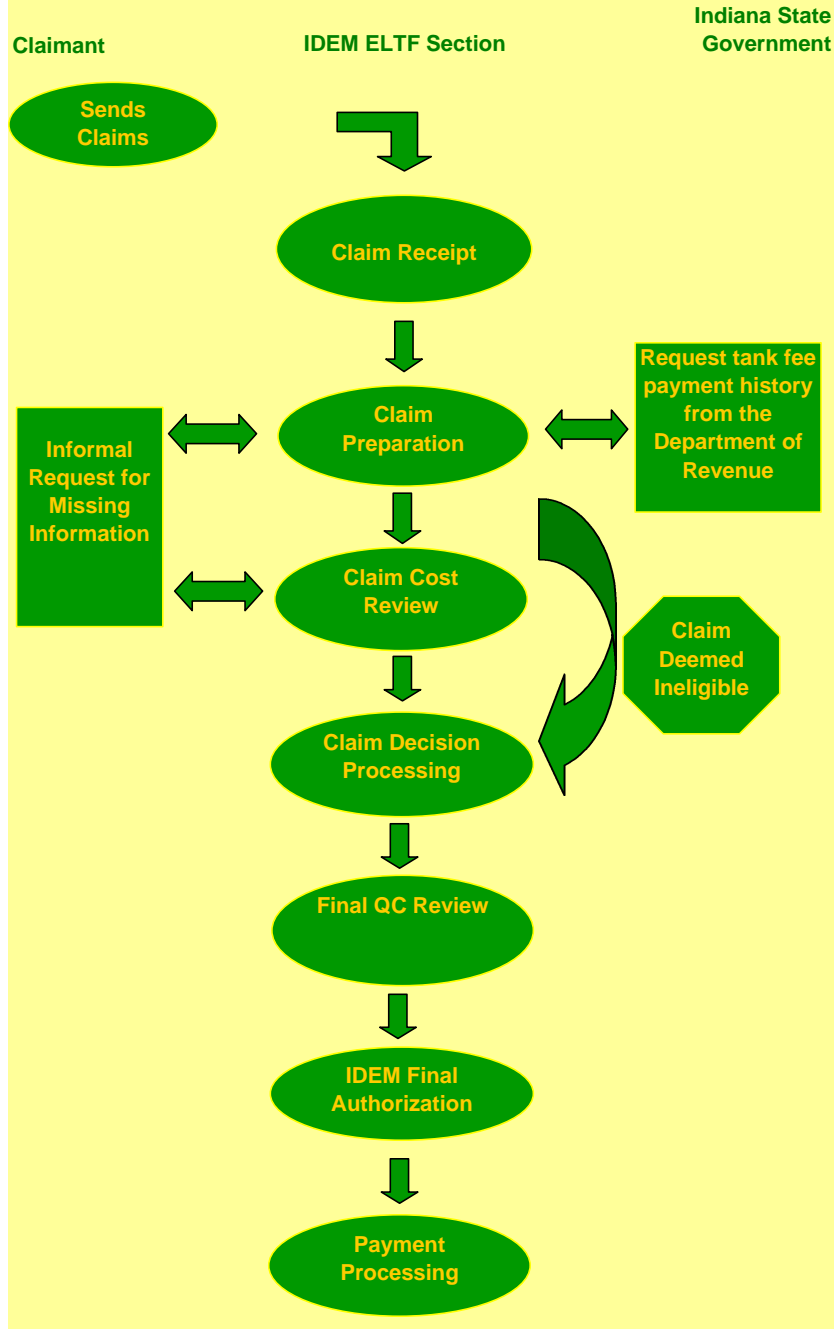
Submittal Period	Claim Receipts	Amount Requested	Claims Reimbursed		Amount Reimbursed	Yearly % Reimbursed
Jan-93	19	\$6,407,632.48	9		\$3,080,321.19	
May-93	36	4,122,677.02	19		866,338.40	33%
Sep-93	20	1,997,008.66	6		182,276.65	
Jan-94	35	4,378,411.83	7		423,528.83	
May-94	27	4,936,764.93	10		1,289,516.80	17%
Sep-94	23	2,890,847.42	9		307,732.75	
Jan-95	36	2,108,093.85	15		706,592.80	
May-95	76	5,185,137.73	27		918,731.78	19%
Sep-95	77	4,662,455.09	32		589,587.76	
Jan-96	106	6,949,510.28	39		2,275,524.31	
May-96	125	4,630,843.68	51		1,891,105.23	40%
Sep-96	159	9,565,712.26	93		4,358,897.07	
Jan-97	128	5,549,889.62	86	(1)	2,598,268.03	
May-97	209	8,270,749.80	130		4,162,410.01	52%
Sep-97	154	5,644,634.45	106		3,307,889.81	
Jan-98	203	8,224,322.76	143		3,913,186.76	
May-98	188	7,468,278.54	134		3,827,702.93	49%
Sep-98	116	3,225,995.17	83		1,538,597.77	
Jan-99	212	6,464,838.31	136		2,336,901.80	
May-99	334	10,349,829.65	218		3,660,856.02	39%
Sep-99	371	11,230,393.59	257		4,807,358.80	
Jan-00	549	19,007,044.03	413	(2)	6,558,277.81	
May-00	464	8,958,528.82	349	(2)	4,899,434.33	37%
Sep-00	209	5,893,785.79	69	(2)	926,883.35	
Totals	3,876	\$158,123,385.76	2,355		\$59,427,920.99	38%

Rule changes to Title 328 Underground Storage Tank Financial Assurance Board effecting owner eligibility took effect on February 8, 1997.

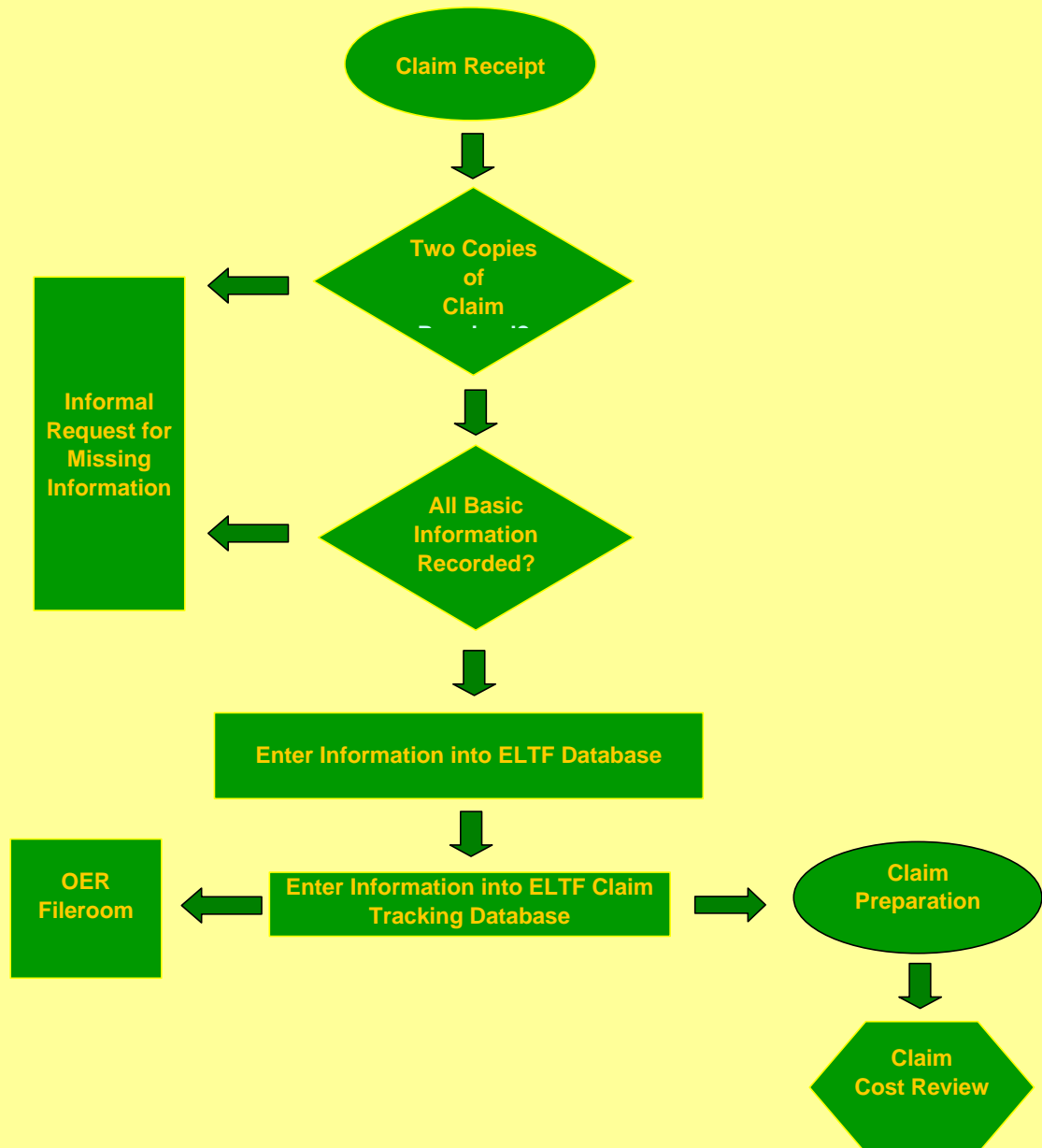
Amounts and yearly percentage reimbursed not final, as there are currently claims pending review.

IDEM EXCESS LIABILITY TRUST FUND

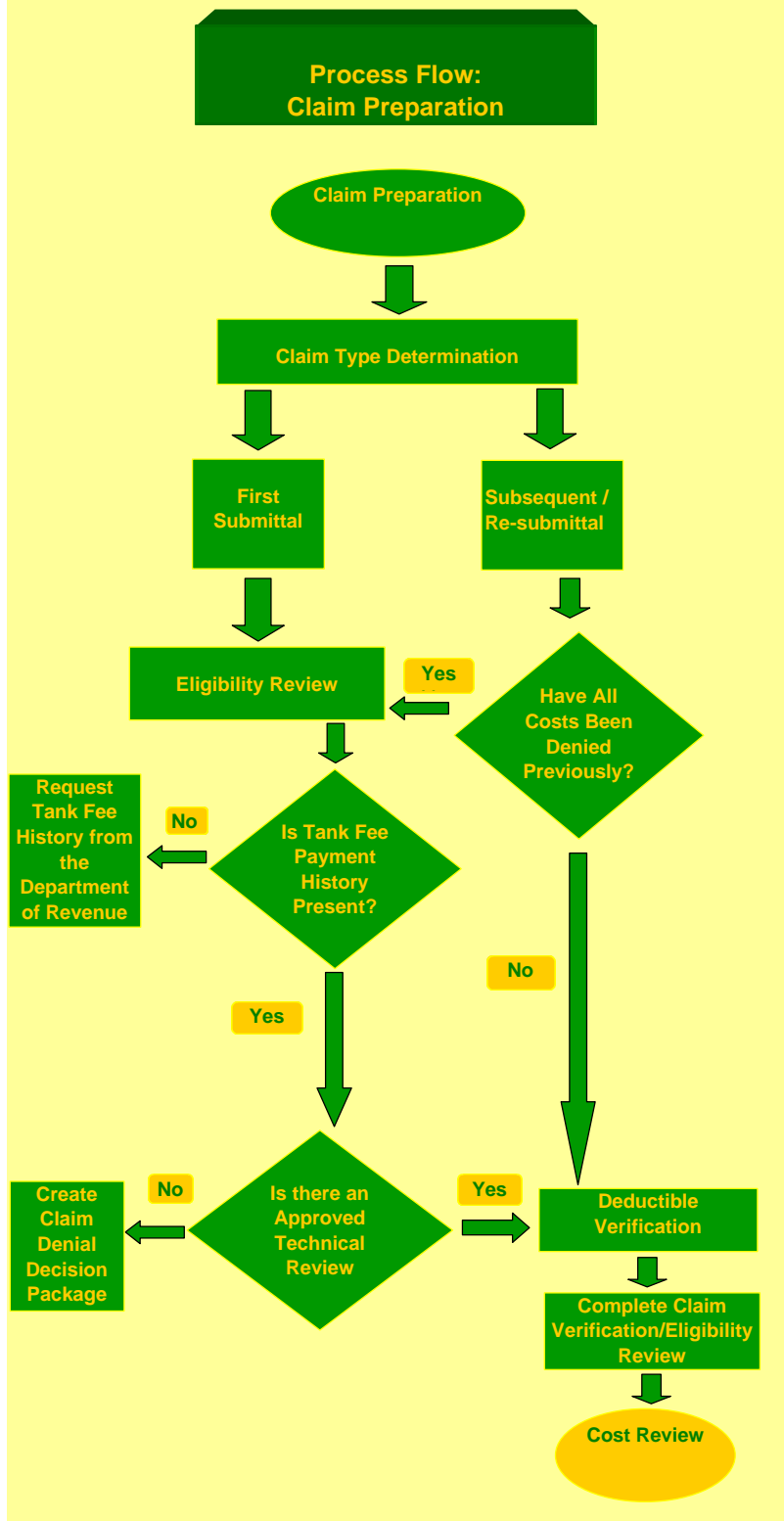
General Process Flow



Process Flow: Claim Tracking



IDEM EXCESS LIABILITY TRUST FUND



**Process Flow:
Claim Decision Processing**

**Claim Decision
Processing**



Creating A Certified Mailing



**Determining the Type of
Decision Letter**



**Generating the Decision
Letter**



**Preparing ELTF File for Final QC
Review**

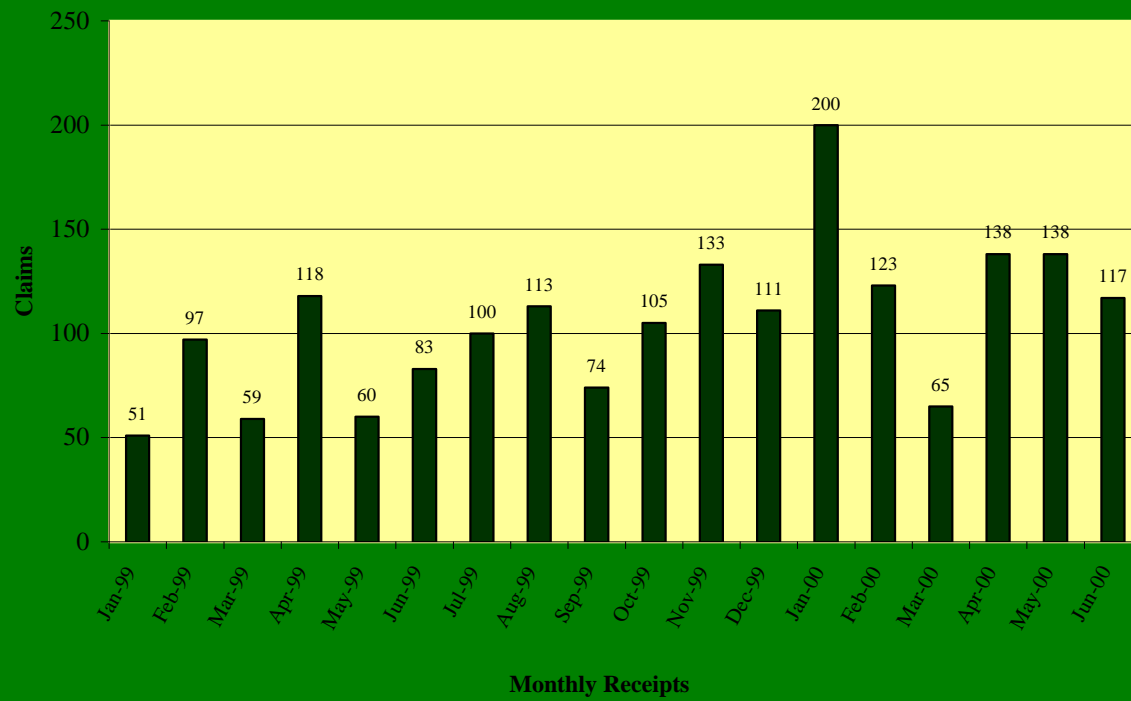


Final QC Review



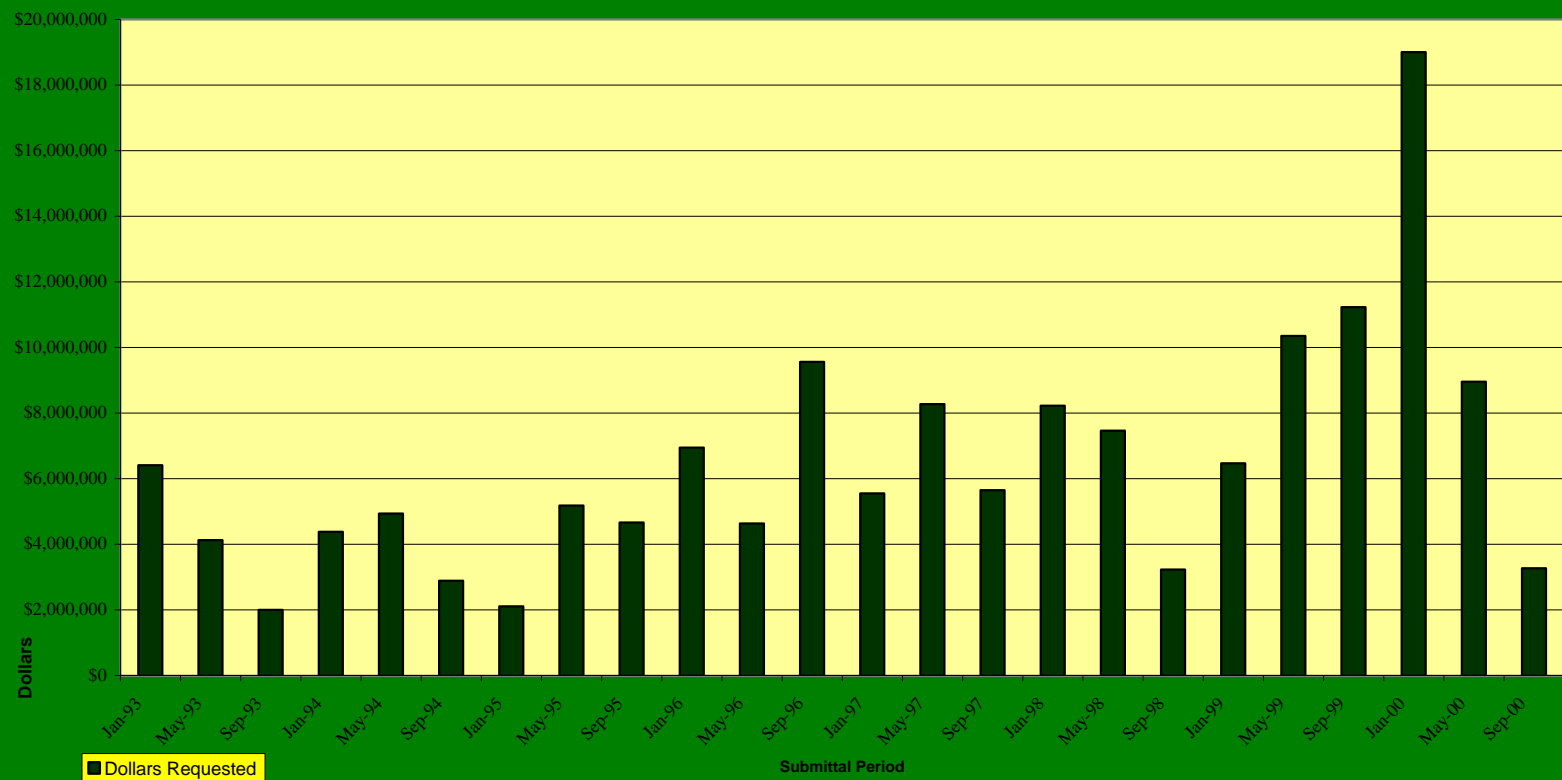
IDEM Final Authorization

**IDEM Excess Liability Trust Fund
Claims Received from January 1999 to June 2000**

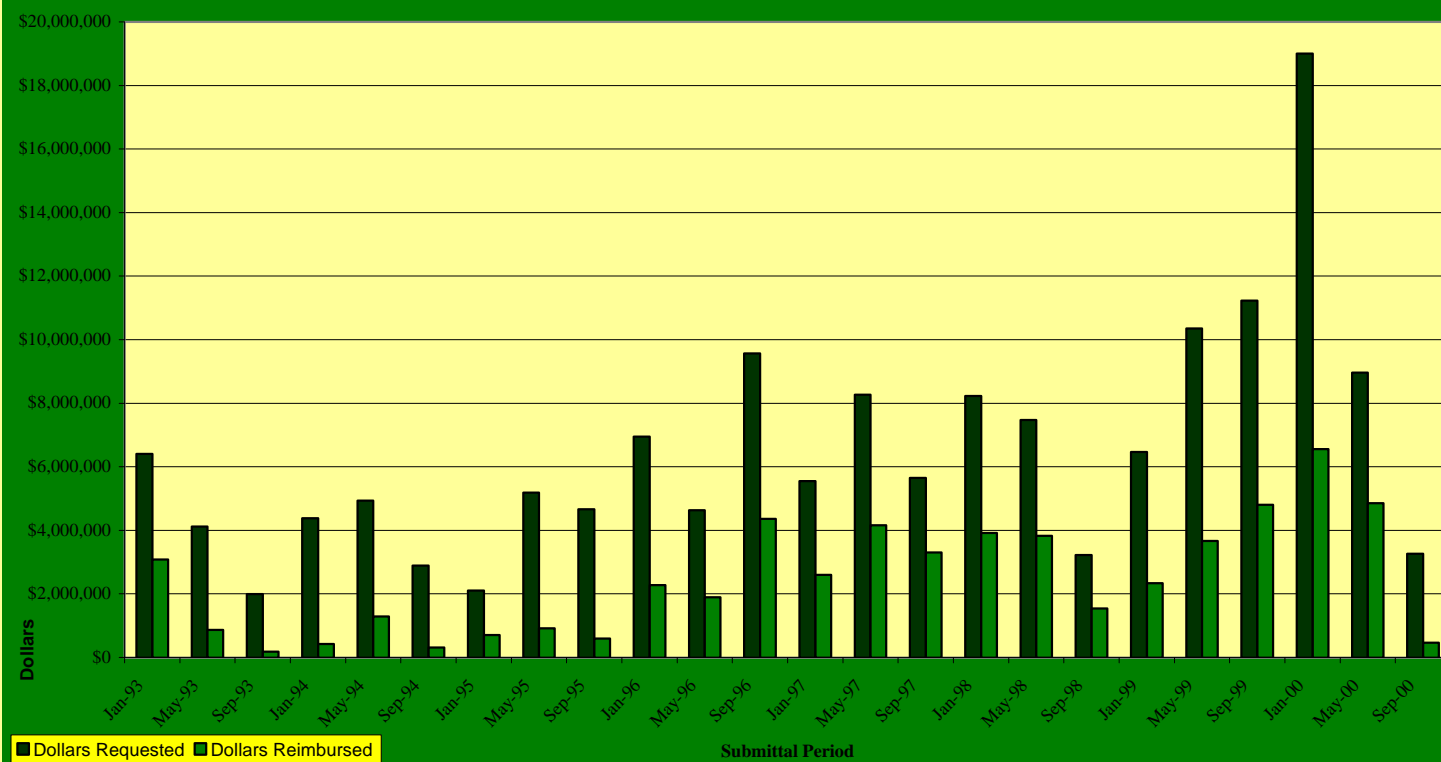


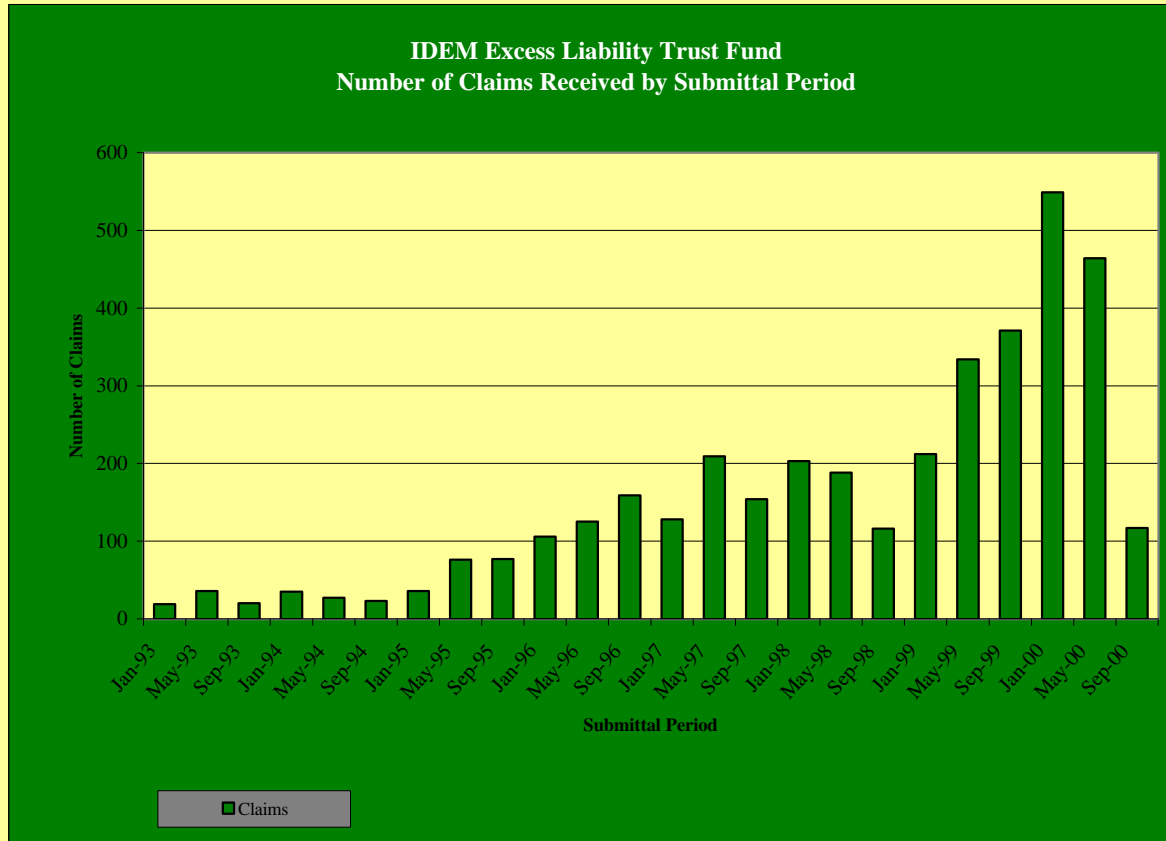
■ Claims Received

**IDEM Excess Liability Trust Fund
Dollars Requested by Submittal Period**



**IDEM Excess Liability Trust Fund
Dollars Requested/Reimbursed by Submittal Period**





Excess Liability Trust Fund Financial Assurance Board Membership

Member Name	Qualification	Phone Number
James H. Acton, Mayor	Local Government; Chair	765-482-1201
Tracy Boatwright	State Fire Marshall	317-232-2226
Steve Browning	Excess Liability Trust Fund Manager	317-234-0341
Linda Dollens	Department of Revenue Designee	317-615-2518 / 2549
Edward P. Grimmer	Public	219-662-1661
William J. Herdich	Independent Petroleum Dealers	765-932-3224
Martha Hollingsworth	Public	317-635-8901 X-270
Joan Marie Kanizer	Convenience Store Operators; Vice-Chair	765-832-6798
Nancy King	Board Counsel	317-232-7694
Kim Logan	State Treasurer Designee	317-232-6388
Roy L. Meeks	Service Station Owners, Under 12 Tanks	
Stanley Pinegar	Petrol Refiner-Supplier	317-639-2588
John B. Sharp	Member of Financial Lending Community	317-686-3605
William Shaver	Independent Petrol Retail Distributor and Marketer With More Than 12 Tanks	219-898-8159
Gregory K. Silver	Environmental Interests	317-263-9417
Courtney Tobin	Indiana Development Finance Authority	317-233-4332
Mary Beth Tuohy	Department of Environmental Management Designee	317-234-0337
Ronald Young	Property & Casualty Insurance	